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EXAMINER

ABELSON, RONALD B

ART UNIT

PAPER NUMBER

2666

DATE MAILED: 09/26/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/488,182

**Applicant(s)**

BAUER ET AL.

**Examiner**

Ronald Abelson

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7,8,10 and 11 is/are rejected.
- 7) ☐ Claim(s) 3,6,9 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4, 7, and 10 are rejected under 35

U.S.C. 102(e) as being anticipated by Cruickshank (US 6,389,005).

Regarding claims 1, 4, and 10, Cruickshank teaches a method and apparatus for an overload control method for use in a multi-branch Internet Protocol (IP) based private exchange (PBX) system with a network environment having a primary network ((fig. 1 box 42) and at least one alternate network (fig. 1 box 40, 44).

The system comprises maintaining a congestion indicator status associated with each path in the primary network, the congestion indicator status indicating whether the path is congested and based on congestion data from at

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least one device that participated in packet telephony communication (fig. 3b box 134, col. 2 lines 32-36).

The system comprises receiving a call set up request from a source terminal (fig. 3b box 122, col. 2 lines 19-27).

The system comprises determining if a primary path between the source terminal and destination terminal is congested using the congestion indicator status (fig. 3b box 136).

The system comprises routing the call using the at least one alternate network if the primary path between the source terminal and a destination terminal is congested (fig. 3b box 138).

Regarding claims 4 and 10, in addition to the limitations listed, setting a congestion indicator flag associated with the path if the congestion data indicates that a path associated with the packet telephony communication is congested (fig. 3b box 136 "Y").

Regarding claim 10, in addition to the limitations listed, a memory and processor (fig. 1 box 14, col. 2 lines 32-34).

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Regarding claim 7, collecting congestion data associated with a packet telephony communication (fig. 3b box 134) and reporting the congestion data to a centralized server that performs overload control, whereby the centralized server evaluated the congestion data to determine if a path associated with the packet telephony communication is congested (fig. 1 box 14, fig. 3b box 134, col. 2 lines 32-34).

Regarding the limitation determining if the packet telephony communication had a duration that exceeded a predefined threshold, Cruickshank teaches measuring parameters such as packet delay, number of dropped packets, and throughput. Therefore, a minimum duration is inherent in order to determine these characteristics.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

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person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 5, 8, and 11 are rejected under 35

U.S.C. 103(a) as being unpatentable over Cruickshank as applied to claims 1, 4, 7, and 10 above, and further in view of Adelman (US 6,006,259).

Cruickshank fails to teach setting a timer that will cause the congestion indicator flag to automatically expire after a predetermined period of time.

Adelman teaches the average packet loss value is computed over a predetermined period of time (adaptive keepalive interval, col. 8 lines 20-23).

Therefore it would have been obvious to one of ordinary skill in the art, having both Cruickshank and Adelman before him/her and with the teachings [a] as shown by Cruickshank, a method and apparatus for an overload control method for use in a multi-branch Internet Protocol (IP) based private exchange (PBX) system with a network environment having a primary network ((fig. 1 box 42) and at least one alternate network, and [b] as shown by Adelman, average packet loss value is computed over a predetermined period of time, to be motivated to modify the system of Cruickshank by calculating the average packet loss value on a predetermined time interval. This

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modification can be performed in software. This would improve the system by ensuring that the packet loss value is reflective of the current conditions of the network.

***Allowable Subject Matter***

5. Claims 3, 6, 9, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: regarding claims 3, 6, 9, and 12, nothing in the prior art of the record teaches or fairly suggests setting the time period to determine congestion that is greater than the time that congestion should have been alleviated, in combination with the other limitations listed in the claim.

***Response to Arguments***

6. Applicant's arguments filed 7/11/2003 have been fully considered but they are not persuasive. Applicant argues the monitoring of packet delay, packets dropped and

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throughput do not represent monitoring congestion (applicant: pg. 5 lines 18-29). The examiner maintains that packet delay, packets dropped and throughput are functions of congestion.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Abelson whose telephone number is (703) 306-5622. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (703) 308-5463. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9600.



Ronald Abelson  
Examiner  
Art Unit 2666

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September 16, 2003



DANG TON  
PRIMARY EXAMINER